

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN SENATE JUNE 1, 2011

**SENATE BILL**

**No. 806**

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**Introduced by Committee on Veterans Affairs (Senators Correa (Chair), Berryhill, Calderon, Cannella, La Malfa, Lieu, Negrete McLeod, Rubio, and Runner)**

February 18, 2011

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An act to amend, repeal, and add Section 19775.2 of the Government Code, relating to state compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 806, as amended, Committee on Veterans Affairs. State employees: military leave: salary overpayment.

Existing law requires the state, when it determines that an overpayment of compensation has been made to an employee, to notify the employee of the overpayment and afford the employee an opportunity to respond before commencing recoupment actions. Existing law requires that administrative action to recover an overpayment from a state employee be initiated within 3 years from the date of overpayment.

Existing law provides that a state employee who is granted a military leave of absence for active duty, whose continuous state service is not broken by a permanent separation, shall be entitled to receive his or her salary for a period not to exceed 30 calendar days in any one fiscal year.

This bill would provide, until January 1, 2015, that when the state determines that an overpayment of compensation has been made to a

state employee on a leave of absence for active military duty as a member of the California National Guard, administrative action to recover overpayment be initiated within 6 years from the date of overpayment, notwithstanding existing law, *unless specified conditions exist*. The bill would make this provision applicable to any overpayment made up to 6 years prior to the operative date of this measure, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19775.2 of the Government Code is  
2 amended to read:

3 19775.2. (a) Pay under the provisions of Sections 19775 and  
4 19775.1, excluding emergency military leave pay provisions, shall  
5 not exceed 30 calendar days in any one fiscal year. The beginning  
6 date of active duty shall determine the fiscal year in which the pay  
7 is accumulated when the period of active duty extends into another  
8 fiscal year.

9 (b) When the state determines that an overpayment of  
10 compensation has been made to an employee of the state on a leave  
11 of absence for active military duty as a member of the California  
12 National Guard, administrative action to recover overpayment  
13 shall be initiated within six years from the date of overpayment,  
14 notwithstanding subdivision (d) of Section 19838 or any other ~~law~~.  
15 *law, unless all of the following conditions exist:*

16 (1) *The employee currently holds the military pay grade of E-1*  
17 *to E-5, inclusive.*

18 (2) *The overpayment was not due to fraud, misrepresentation,*  
19 *or willful nondisclosure on the part of the employee.*

20 (3) *The overpayment was received without fault on the part of*  
21 *the employee.*

22 (4) *Recovery of the overpayment from the employee would be*  
23 *against equity and good conscience.*

24 (c) Notwithstanding any other law, subdivision (b) shall apply  
25 to any overpayment made up to six years prior to the date the act  
26 adding this subdivision becomes operative. Nothing in this section

1 is intended to revive actions or causes of action as to which there  
2 has been a final judgment prior to that operative date.

3 (d) This section shall remain in effect only until January 1, 2015,  
4 and as of that date is repealed, unless a later enacted statute, that  
5 is enacted before January 1, 2015, deletes or extends that date.

6 SEC. 2. Section 19775.2 is added to the Government Code, to  
7 read:

8 19775.2. (a) Pay under the provisions of Sections 19775 and  
9 19775.1, excluding emergency military leave pay provisions, shall  
10 not exceed 30 calendar days in any one fiscal year. The beginning  
11 date of active duty shall determine the fiscal year in which the pay  
12 is accumulated when the period of active duty extends into another  
13 fiscal year.

14 (b) This section shall become operative on January 1, 2015.

15 SEC. 3. This act is an urgency statute necessary for the  
16 immediate preservation of the public peace, health, or safety within  
17 the meaning of Article IV of the Constitution and shall go into  
18 immediate effect. The facts constituting the necessity are:

19 In order to permit the state to initiate administrative proceedings  
20 that would otherwise be barred by existing law to recoup excess  
21 payments of state salaries, it is necessary that this act take effect  
22 immediately.